IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1060 OF 2005

Balkrishna Dhondu Raul ... Applicant

versus

Manik Motiram Jagtap and anr. ... Respondents

...

Mr.B.D. Joshi, for the Applicant.

Mr.A.P. Mundargi, with Mr. Niranjan Mundargi, for the Respondent No.1.

Mr. A.S. Gadkari, A.P.P., for the Respondent No.2.

...

CORAM : A.M.KHANWILKAR,J.

29th March 2005

P.C.:

1. Heard Counsel for the parties. This application takes exception to the order passed by the Sessions Court, Raigad at Alibag, dated 8th February 2005, as well as the order passed by the J.M.F.C., Mahad at Mahad, dated 9th February

2005. The background in which the aforesaid orders came to be passed is as follows.

2. Respondent No.1 has been named as accused in an offence registered with Mahad Police Station punishable under sections 147, 148, 307, 323, 504, 437, 452, 506 of the Indian Penal Code; and section 3 read with section 25 of the Arms Act. Respondent No.1 had, in the first place, approached the Sessions Court by way of anticipatory bail application, which was, however, rejected. Another unsuccessful attempt of anticipatory bail was made before this Court by Respondent No.1. This Court by order dated 3rd February 2005 disposed of the anticipatory bail application preferred by the Respondent No.1 granting limited protection to Respondent No.1 to surrender before the appropriate Court and prefer regular bail application, if so advised, on or before 9th February 2005. In view of the liberty granted by this Court, Respondent No.1 surrendered before the Sessions Court and moved application for regular bail. The Sessions Court, by order dated 8th February 2005, prima facie, observed that considering the provisions

of section 209 of the Cr.P.C., the appropriate Court to surrender would be J.M.F.C. at Mahad, who has jurisdiction over that particular matter. Nonetheless, the Sessions Court proceeded to grant provisional bail to the Respondent No.1 till the final hearing of the bail application, which was scheduled for 17th February 2005. On 9th February 2005, the investigating officer moved the concerned J.M.F.C. at Mahad for sending the Respondent No.1 to police custody. The Respondent No. 1 had appeared before the J.M.F.C., but the Court did not accede to the request made by the investigating officer to send the Respondent No.1 to police custody. Instead, it directed that he be sent to Magisterial custody. Immediately, on passing of that order, the Respondent No.1 moved a formal application before the concerned Magistrate pointing out that he was ordered to be released on provisional bail by the Sessions Court and that order was still operating in his favour. The Magistrate in order dated 9th February 2005, adverting to the fact pointed out by the Respondent No.1, proceeded to order that the Respondent No.1 be released on same bail as has been provisionally granted by

the Sessions Court, Raigad at Alibag till further orders by the Sessions Court. It is not in dispute that thereafter the regular bail application has been heard by the Sessions Court and finally disposed of on 17th February 2005 directing release of the Respondent No.1 on regular bail in relation to the offence in question.

3. Mr. Joshi, for the Applicant, however, contends that the Sessions Court was not the appropriate Court where the Respondent No.1 could have surrendered in terms of the order passed by this Court on 3rd February 2005 on his anticipatory bail application. Whereas, the appropriate Court would be the Court of J.M.F.C., where remand proceedings were to be proceeded on the application made in that behalf by the investigating agency. In his submission, therefore, the Sessions Court could not have passed the order on the application for bail preferred by the Respondent No.1, being incompetent to entertain the said application, unless the Respondent No.1 was to first approach the Court of Magistrate and surrender before that

Court. It is contended that even the order passed by the Magistrate on 9th February 2005 cannot be sustained. Inasmuch as, the Respondent No.1 having volunteered to appear/surrender before the Court of J.M.F.C., the order which was passed by the Sessions Court and was to enure in his favour till 17th February 2005 came to an end and the Magistrate ought to have dealt with the Respondent No.1's application for bail on its own merits in accordance with law. It is, therefore, contended that the order of the Magistrate releasing the Respondent No.1 on same bail as has been provisionally granted by the Sessions Court, Raigad at Alibag, cannot stand the test of judicial scrutiny. To buttress the above submissions, reliance is placed on the decision of the Apex Court in the case of Sunita Devi v. State of Bihar and anr., reported in 2005 ALL MR (Cri) 511 (S.C.). Reliance is also placed on the decision of the Apex Court in the case of Niranjan Singh and another v. Prabhakar Rajaram Kharote and others, reported in A.I.R. 1980 S.C. 785.

4. In my opinion, however, there is no

substance in the submission canvassed on behalf of the Applicant before this Court. For, after this Court granted liberty to the Respondent No.1 to surrender before the appropriate Court and apply for regular bail, if so advised, the Respondent No.1 became liable to surrender before the Court before his prayer for bail could be considered. That does not mean that the Respondent No.1 was obliged to surrender before the Court of J.M.F.C. and could not have surrendered before the Court of Sessions, Raigad at Alibag, which, indeed, was the Court competent to entertain the bail application in respect of the offences, which was punishable with imprisonment for life. On the other hand, if the Respondent No.1 was to surrender before the Court of J.M.F.C. at Mahad, that Court could not have granted bail to the Respondent, having regard to the nature of offence for which the Respondent No.1 was being tried being punishable with imprisonment for life. In that sense, the Court of Sessions was the appropriate Court where the Respondent No.1 could have surrendered before inviting the Court to consider his regular bail application. Viewed in this perspective, no

fault can be found with the order passed by the Sessions Court directing release of the Respondent No.1 on provisional bail by order dated 8th February 2005, as that Court assumed jurisdiction to pass such an order on the bail application moved before it by the accused upon surrendering before that Court.

5. The grievance of the Applicant that the Magistrate could not have granted bail to the Respondent No.1 clearly overlooks the circumstances in which the said order came to be passed by the Magistrate. The investigating agency moved a formal application for giving police custody of Respondent No.1. On that application, the Court ordered that the Respondent No.1 be sent to Magisterial custody. Soon after that order was passed, the Respondent No. 1 moved a formal application asserting that provisional bail has already been granted by the Sessions Court, which was operating in favour of Respondent No.1, and for which reason, Respondent No.1 ought not to be sent to Magisterial custody as has been ordered. In view of this situation, the J.M.F.C. proceeded to order to release the

Respondent No.1 on same bail which has been provisionally granted by the Sessions Court till further orders to be passed by the Sessions Court, Raigad at Alibag. In fact, in view of the subsisting provisional bail order passed by the Sessions Court in favour of the Respondent No.1, the Magistrate had no jurisdiction to order that Respondent No.1 be taken into Magisterial custody. Significantly, the Magistrate has only corrected the mistake and passed an order only to give effect to the provisional bail order passed by the Sessions Court.

6. To get over this position, it was argued that the provisional bail order granted by the Sessions Court came to an end as soon as the Respondent No. 1 appeared before the Magistrate. As a consequence, the Magistrate could not have granted bail to the Respondent No.1. There is no substance in this submission. Appearance made by the Respondent No.1 was only because Remand Application was moved before the Magistrate by the Investigating Agency. That does not mean that the Respondent No.1 gave up his rights as were available to him under the subsisting order

of the Sessions Court. Besides, as mentioned earlier, the Magistrate has not granted bail as such, but, has passed an order to give effect to the subsisting provisional bail order passed by the Sessions Court. Viewed in this perspective, it is not a case of abuse of process of the Court by the Respondent No.1 as is sought to be contended. But, on the other hand, the Respondent No.1 has subjected himself to the orders of the Court passed from time to time.

7. Insofar as the decision in the case of Sunita Devi (supra) pressed into service on behalf of the Applicant is concerned, that is a judgment dealing with the issue as to when a person can be said to be in custody. Much reliance was placed on exposition in para 16 of the decision. In my view, however, the ratio in para 16 of the decision in that case is of no avail to the Applicant. That is not a decision, which deals with the question that the Sessions Court is not the appropriate Court for surrendering, so as to entertain the regular bail application in respect of offence punishable with imprisonment for life.

8. Reliance was also placed on the decision in the case of Niranjan Singh (supra). Even this decision is of no avail. Inasmuch as, the fact situation in that case was that the Magistrate proceeded to finally dispose of the bail application without requiring the accused to surrender before him or taken into custody. In that context, the Apex Court has observed that the Court could not have entertained the bail application, unless the accused was in custody. This is not an authority on the proposition that the accused named in offences punishable with imprisonment for life cannot surrender before the Sessions Court and avail of remedy of bail as permissible by the provisions of the Code of Criminal Procedure. Taking any other view will run contrary to the purport of section 439 of the Code.

9. Be that as it may, as mentioned earlier, in the present case, the regular bail application filed by the Respondent No.1 before the Sessions Court has been finally heard and decided on 17th February 2005, whereby the prayer for regular

bail has been granted by the Sessions Court. That order is not subject matter of challenge in the present petition.

10. Accordingly, there is no substance in this application. The same is dismissed.

(A.M.KHANWILKAR,J.)